



Federal Communications Commission  
Washington, D.C. 20554

December 20, 2013

In Reply Refer To:  
1800B3-PHD

David G. O'Neil, Esq.  
Rini & Coran, P.C.  
1140 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

John C. Trent, Esq.  
Pubrese Hunsaker & Trent, PC  
200 South Church Street  
Woodstock, VA 22664

In Re: W250BN, West Allis, WI  
Facility ID No. 155293  
File No. BPFT-20111021ADL

Informal Objection

Dear Counsel:

We have before us the above referenced minor change application ("Application") of Radio Power, Inc. ("Radio Power") to modify Station W250BN ("Station"). Also before us is an informal objection ("Objection") filed by Milwaukee Free Radio Group ("MFRG") on November 1, 2011 and various responsive pleadings. For the reasons set forth below, we deny the Objection and grant the Application.

**Background.** The Application is the sixth of a series of applications filed by Radio Power to relocate the Station. MFRG contends that these moves, viewed in their entirety, "was a preconceived scheme to move a translator a distance of 69 miles from Beloit to Milwaukee, all by using minor changes so as to circumvent the requirement to wait for a window for filing a major change."<sup>1</sup> It asserts that in *Letter to John F. Garziglia*,<sup>2</sup> the Commission concluded that serial modifications of this sort constitute an abuse of process and that the Application should be denied on this basis.<sup>3</sup>

In opposition, Radio Power argues that the "sole purpose of the [A]pplication is to optimize location of the translator . . ."<sup>4</sup> in the Milwaukee market. It notes that MFRG does not dispute the fact that the Application complies with the Commission's technical rules.<sup>5</sup> It also contends that the facts of this case are distinguishable from those at issue in *Broadcast Towers, Inc.*, where a licensee surrendered

---

<sup>1</sup> Objection at 2.

<sup>2</sup> *John F. Garziglia*, Letter, 26 FCC Rcd 12685 (Aud. Div. 2011) ("*Garziglia*").

<sup>3</sup> Objection at 2.

<sup>4</sup> Opposition to Informal Objection at 2.

<sup>5</sup> *Id.*

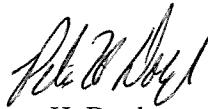
for cancellation five translator authorizations which the licensee had attempted to move into the Miami market through a series of modification application filings.

**Discussion.** In *Garziglia*, we found that the filing of serial translator modification applications represents an abuse of process. Radio Power's five moves and sixth proposed move over an 18-month period raise significant concerns about the misuse of the Commission's licensing processes. However, it is also the case that the staff granted the first five modification applications prior to the release of *Garziglia*. In these circumstances, we believe it would be unduly harsh and unfair to pursue an enforcement action against Radio Power and we decline to do so. In this case, our concern that serial modifications could undermine important *Ashbacker* principles is somewhat assuaged by the fact that numerous LPFM new station applications were filed in the recent LPFM window. Finally, we find that the Application complies with all Commission rules.

**Conclusion/Actions.** Accordingly, IT IS ORDERED that the Informal Objection of Milwaukee Free Radio Group filed on November 1, 2011, IS DENIED.

IT IS FURTHER ORDERED, that the application filed by Radio Power, Inc. (File No. BPFT-20111021ADL ) IS GRANTED.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter H. Doyle", is written over a horizontal line.

Peter H. Doyle  
Chief, Audio Division  
Media Bureau